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Legal Affairs

MetLife®

February 3, 2011

Filed Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Definition of Fiduciary Proposed Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: Proposed Rule on Definition of Fiduciary

Dear Ladies and Gentlemen:

On behalf of MetLife, Inc., and its affiliated broker-dealers and registered investment advisers,¹ we are writing to comment on the proposed regulations that the Department published on October 22, 2010 in the Federal Register that would redefine the term fiduciary under ERISA Section 3(21) and Internal Revenue Code Section 4975(e) (hereinafter the "Proposed Fiduciary Regulations").

In our view, the overly broad expansion of the fiduciary definition contemplated by the Proposed Fiduciary Regulations would have an adverse effect on retirement savings by raising costs associated with ERISA plans and Individual Retirement Accounts ("IRAs") and limiting consumers' access to advice when they most need it. More specifically, broadly expanding the ways a service provider becomes a fiduciary will likely lead to significantly increased compliance and fiduciary liability costs for these service providers, and it is likely that these increased costs will be passed on to plans and IRAs. Further, many service providers will discontinue providing services, such as appraisal and valuation services, to ERISA plans and IRAs if the services are subject to the fiduciary rules, especially given the additional compliance burdens and costs, as well as potential fiduciary and prohibited transaction liability.

The impact of the broadly expanded definition of fiduciary as it applies to the provision of investment advice is compounded by the Department's proposed investment advice regulations published on March 2, 2010² (hereinafter the "March Proposed Investment Advice Regulations"), which further restrict the ability of firms, such as MetLife's affiliated broker-dealers and their approximately 10,000 registered representatives, to provide

¹ MetLife's affiliated broker-dealers and retail investment advisers include MetLife Securities, Inc., New England Securities, Walnut Street Securities, and Tower Square Securities.

² Investment Advice – Participants and Beneficiaries; Proposed Rule [75 Fed. Reg. 9360 (March 2, 2010)].

investment advice to ERISA plans, plan participants or IRAs, without violating the prohibited transaction rules. Mutual fund companies pay broker-dealers differing levels of compensation in connection with the distribution of mutual funds, including 12b-1 fees which may vary from fund to fund. This differential compensation is a significant component of how mutual fund companies pay broker dealers for distribution services. In 2009 alone, approximately \$9.5 billion in 12b-1 fees were paid in connection with mutual fund distribution.³ Given the significance of differential compensation from 12b-1 fees in the distribution of mutual funds, revenue neutrality at the firm level is not a realistic or economically viable option for most broker-dealers. Nor are computer models a satisfactory substitute for the recommendation of a client's financial services representative. However, these are the only options available to broker-dealers and their representatives under the March Proposed Investment Advice Regulations.

The only other option is to limit broker-dealers and their representatives to "investment education," i.e. prohibiting representatives from recommending a specific investment option. As you are aware, the SEC staff recently submitted a report to Congress pursuant to Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 recommending that the SEC impose a uniform fiduciary standard of conduct on brokers, dealers, and investment advisers when providing personalized investment advice about securities.⁴ The report recommended that, consistent with the statute and prior legal precedent, conflicts of interest, including those related to compensation, generally could be cured by disclosure. One of the principal factors relied on by the staff in support of its recommendation is the current confusion among customers about the standard applicable to their financial services representatives. The report concluded that it did not make sense to have different standards and, in order to eliminate customer confusion and enhance customer protection, there should be one uniform federal fiduciary standard. However, if the Department adopts the Proposed Fiduciary Regulations and the March Proposed Investment Advice Regulations, there will be at least two federal fiduciary standards applicable to personalized investment advice about securities.

A simple example will illustrate the point. A customer wants to purchase an IRA for retirement and a 529 plan for his children's education. The same mutual funds are available in both the IRA and the 529 plan and some of them pay 12b-1 fees to a representative's broker-dealer. Assuming that SEC rules are adopted along the lines recommended in the report, the representative would be able to assist his customer in selecting the investment options for his 529 plan, so long as there is adequate disclosure about any conflict caused by the receipt of the 12b-1 fees to enable the customer to make an informed investment decision. However, if the Department rules are adopted as proposed, the representative would have to use a computer model to select the funds or be limited to education with respect to the investment options in the IRA. How does the representative explain this inconsistency to the customer? Notwithstanding that he or she is a fiduciary and charged with acting in the best interest of the customer with respect to both transactions, the level of services that the representative can provide in connection with the IRA are less than what he or she can

³ Investment Company Institute, 2010 Investment Company Fact Book at 75 (2010).

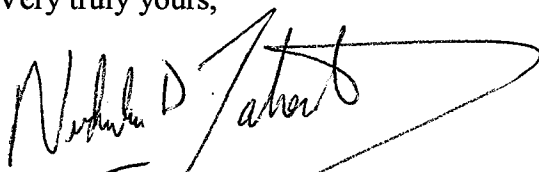
⁴ SEC, Study on Investment Advisers and Broker-Dealers, available at www.sec.gov/news/studies/2011/913studyfinal.pdf.

provide in connection with the 529 plan. Clearly, this will only exacerbate existing customer confusion about the duties and obligations of their financial services representatives.

Insurance company affiliated broker-dealers represent the majority of the representatives registered with FINRA. These broker-dealers generally provide financial services to middle America – the small to mid-size ERISA plan; the individual rolling over his or her plan assets into an IRA at retirement – in sum, the people who cannot afford to pay substantial fees for investment advisory services or consultants. The combination of the Proposed Fiduciary Regulations and the March Proposed Investment Advice Regulations will erect significant barriers and impose substantial costs on broker-dealers who provide these services today. The end result will be further confusion of the public regarding the role of financial service providers when rendering substantially the same services. We believe that the approach to customer protection in connection with the provision of personalized investment advice about securities should be consistent at the federal level. We further believe that the recommendation of the SEC staff is a reasonable approach and as documented at length in the report would provide customers with continued access to advice thorough a variety of financial professionals and business models. We would, therefore, respectfully request that the Department withdraw the current proposed regulations, and work with the SEC to develop a uniform federal fiduciary standard that will apply to the provision of personalized investment advice regarding securities.

On behalf of MetLife, we appreciate the opportunity to comment on the proposed regulations and are available to discuss these comments with the Department.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Nicholas D. Latrenta", with a large, sweeping flourish extending from the end of the signature.

Nicholas D. Latrenta
Executive Vice-President and General Counsel